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Southern District of New York*

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15 CURRENT AND FORMER REGISTERED SPECIALISTS
ON THE NEW YORK STOCK EXCHANGE INDICTED
ON FEDERAL SECURITIES FRAUD CHARGES

DAVID N. KELLEY, the United States Attorney for the Southern District of New York, and JOHN KLOCHAN, the Acting Assistant Director-in-Charge of the New York Office of the Federal Bureau of Investigation, announced today the unsealing of nine indictments charging 15 current and former New York Stock Exchange (the "NYSE") specialists. The indictments allege that the defendants, as registered specialists, violated the federal securities laws through patterns of fraudulent and improper trading from approximately 1999 through April 2003.

The 15 individuals charged in today's indictments were, or are currently, employed by five NYSE specialist firms. Defendants DAVID FINNERTY, DONALD R. FOLEY II, SCOTT G. HUNT and THOMAS J. MURPHY, JR., acted as specialists at Fleet Specialist, Inc., now known as Banc of America Specialist ("Fleet"). Defendants FRANK A. DELANEY IV and KEVIN M. FEE acted as

specialists at Bear Wagner Specialists LLC ("Bear Wagner"), and are currently employed as managing directors at Bear Wagner, working at Bear Wagner's proprietary trading desk. Defendant FREDDY DEBOER acted as a specialist at LaBranche & Co. LLC ("LaBranche"). Defendant ROBERT A. JOHNSON, JR., acted as a specialist at Spear, Leeds & Kellogg Specialists LLC ("Spear Leeds"). Defendants PATRICK MCGAGH, JOSEPH BONGIORNO, MICHAEL HAYWARD, RICHARD VOLPE, MICHAEL STERN, GERARD HAYES and ROBERT SCAVONE acted as specialists at Van der Moolen Specialists USA, LLC ("VDM"). Fourteen of the defendants served at some point in either supervisory or management positions within their respective specialist firms. In addition, seven of the defendants - DELANEY, JOHNSON, BONGIORNO, HAYWARD, STERN, VOLPE and SCAVONE - each served as NYSE floor officials and were responsible for supervising and regulating trading floor activities. BONGIORNO also served as one of twenty senior floor officials known as Floor Governors.

As charged in the Indictments, purchases and sales of securities on the NYSE must generally be executed through a specialist who works on the floor of the exchange. Each security listed for trading on the NYSE is assigned to a particular specialist and is traded through an assigned "post" on the floor of the exchange. Orders to purchase or sell securities are presented to a specialist in one of two ways: either orally and

in person by a floor broker on the floor of the NYSE, or transmitted to the specialist electronically using the NYSE's Super Designated Order Turnaround System ("Super DOT"). Orders transmitted over the Super DOT system appear on a special computer screen, often referred to as the "display book," which is present at every specialist's trading post.

After receiving an order to buy or sell a security, the specialist could execute or "fill" the order in one of two ways. Generally, the specialist must match any open orders to buy from one investor with an open order to sell from another investor within the same price range. Orders executed in this manner are generally referred to as "agency" orders because the specialist simply acts as an agent matching orders from willing buyers with willing sellers. Specialists were generally required by rules of the United States Securities and Exchange Commission and the NYSE to execute trades on an agency basis whenever possible.

The Indictments also charge that NYSE rules prohibited specialists from buying or selling securities on a principal or dealer basis if the specialist were aware of pending orders from investors at the same price. In other words, according to the Indictments, specialists were prohibited from "trading ahead" of public orders by buying or selling stock for their proprietary accounts at prices that were more advantageous than the prices they would then give to existing public orders.

The Indictments allege that the defendants systematically violated NYSE rules and breached their duties to investors by both "trading ahead" of investor orders and "interpositioning" trades for their firms' accounts between open investor orders. As described in the Indictment, a specialist "trades ahead" by filling executable customer buy and sell orders through principal trades from the specialist's proprietary accounts in front of executable customer orders. A specialist engages in "interpositioning" by either purchasing stock for the specialist's proprietary accounts from customer sell orders, and then filling customer buy orders by selling from their proprietary accounts at a higher price, or selling stock from their proprietary accounts to customer buy orders, and then filling customer sell orders by buying for their proprietary accounts at a lower price. Thus, the specialists and their firms' proprietary accounts allegedly profited by capturing the spread between the lower price at which they bought stock from customer sell orders and the higher price at which they sold stock to customer buy orders. By interpositioning and buying or selling stock for the proprietary account at the most advantageous price available, the specialists allegedly disadvantaged at least one of the customer orders that was a

party to the transaction by executing the customer orders at a less advantageous price.

According to the Indictments, illegal trading profits earned by each of these defendants as a result of interpositioning ranged from approximately \$150,000 to approximately \$4.4 million, and customer harm caused by each of these defendants as a result of trading ahead ranged from approximately \$400,000 to \$5 million. The total amount of illegal trading profit alleged to have been caused by interpositioning by all of the defendants, collectively, was approximately \$13,467,000. The total amount of customer harm alleged to have been caused by trading ahead by all of the defendants, collectively, was approximately \$19,040,000.

FINNERTY, 38, lives in Weehawken, New Jersey.

FOLEY, 44, lives in Darien, Connecticut.

HUNT, 36, lives in Campbell Hall, New York.

MURPHY, 41, lives in Rockville Center, New York.

DELANEY, 42, lives in Rumson, New Jersey.

FEE, 37, lives in Ridgewood, New Jersey.

DEBOER, 43, is believed to reside in the Netherlands.

JOHNSON, 39, resides in Freehold, New Jersey.

MCGAGH, 39, lives in Little Silver, New Jersey.

BONGIORNO, 50, lives in Brooklyn, New York.

HAYWARD, 51, lives in Ramsey, New Jersey.

VOLPE, 45, lives in Port Washington, New York.

STERN, 54, lives in New Canaan, Connecticut.

HAYES, 44, lives in Easton, Connecticut.

SCAVONE, 45, lives in Franklin Lakes, New Jersey.

Fourteen of the individuals charged surrendered to law enforcement authorities this morning and are expected to be presented later today in Manhattan federal court.

If convicted, the defendants face, on each count of securities fraud, a maximum sentence of 10 years in prison and a maximum fine of the greatest of \$1 million or twice the gross gain or loss resulting from the offense if the conduct pre-dated July 30, 2002, the effective date of the Sarbanes-Oxley Act, and a maximum sentence of 20 years in prison, and a maximum fine of the greatest of \$5 million or twice the gross gain or loss resulting from the offense, if the conduct post-dates Sarbanes-Oxley. In addition, each of the VDM defendants faces a maximum sentence on the conspiracy count of five years in prison, as well as a fine of the greatest of \$250,000 or twice the gross gain or loss resulting from the offense.

Mr. KELLEY, a member of the President's Corporate Fraud Task Force, praised the efforts of the Federal Bureau of Investigation. Mr. KELLEY also thanked the SEC, which today

filed civil securities fraud charges against the individuals indicted, for its assistance in the investigation of this case, as well as the NYSE, which has been cooperating with the Government in its continuing investigation.

Mr. KELLEY also stated: "Specialists play a unique and fundamental role in the proper functioning of our securities markets. They are charged with special duties and responsibilities to ensure that markets operate fairly and openly. The conduct alleged in these indictments violated those most important duties. These defendants broke the rules repeatedly, they cheated the markets and they cheated the investors who relied upon them. This Office will vigorously act to protect investors from market professionals who violate the rules and abuse their positions of trust for economic gain."

Assistant United States Attorneys MICHAEL S. SCHACHTER and LAUREN GOLDBERG are in charge of the prosecution.

The charges contained in the Indictments are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

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